

**31A-8-209. Minimum capital or minimum permanent surplus.**

(1) (a) A health maintenance organization being organized or operating under this chapter shall have and maintain a minimum capital or minimum permanent surplus of \$100,000.

(b) Each health maintenance organization authorized to do business in this state shall have and maintain qualified assets as defined in Subsection 31A-17-201(2) in an amount not less than the total of:

- (i) the health maintenance organization's liabilities;
- (ii) the health maintenance organization's minimum capital or minimum permanent surplus required by Subsection (1)(a); and
- (iii) the greater of:
  - (A) the company action level RBC as defined in Subsection 31A-17-601(8)(b); or
  - (B) \$1,300,000.

(2) (a) The minimum required capital or minimum permanent surplus for a limited health plan may not:

- (i) be less than \$10,000; or
- (ii) exceed \$100,000.

(b) The initial minimum required capital or minimum permanent surplus for a limited health plan required by Subsection (2)(a) shall be set by the commissioner, after:

- (i) a hearing; and
- (ii) consideration of:
  - (A) the services to be provided by the limited health plan;
  - (B) the size and geographical distribution of the population the limited health plan anticipates serving;
  - (C) the nature of the limited health plan's arrangements with providers; and
  - (D) the arrangements, agreements, and relationships of the limited health plan in place or reasonably anticipated with respect to:

(I) insolvency insurance;

(II) reinsurance;

(III) lenders subordinating to the interests of enrollees and trade creditors;

(IV) personal and corporate financial guarantees;

(V) provider withholds and assessments;

(VI) surety bonds;

(VII) hold harmless agreements in provider contracts; and

(VIII) other arrangements, agreements, and relationships impacting the security of enrollees.

(c) Upon a material change in the scope or nature of a limited health plan's operations, the commissioner may, after a hearing, alter the limited health plan's minimum required capital or minimum permanent surplus.

(3) The commissioner may allow the minimum capital or permanent surplus account of an organization to be designated by some other name.

(4) A pattern of persistent deviation from the accounting and investment standards under this section may be grounds for the commissioner to find that the one or more persons with authority to make the organization's accounting or investment decisions are incompetent for purposes of Subsection 31A-5-410(3).

Amended by Chapter 308, 2002 General Session